

SB 1153-6
(LC 4004)
6/4/25 (DJ/AG/ps)

Requested by Senator JAMA (at the request of Governor Tina Kotek)

**PROPOSED AMENDMENTS TO
SENATE BILL 1153**

1 On page 1 of the printed bill, line 2, delete “537.803,” and insert “537.348,
2 537.465,”.

3 In line 3, after “540.531” insert “and section 1, chapter 445, Oregon Laws
4 2015”.

5 Delete lines 6 through 24 and delete pages 2 through 12 and insert:
6

7 **“CONSIDERING THE EFFECTS OF TRANSFERS ON THE PUBLIC**
8 **INTEREST**

9
10 **“SECTION 1.** ORS 537.211 is amended to read:

11 “537.211. (1) The approval of an application referred to in ORS 537.140 or
12 537.400 shall be set forth in a water right permit issued by the Water Re-
13 sources Department. The permit shall specify the details of the authorized
14 use and shall set forth any terms, limitations and conditions as the depart-
15 ment considers appropriate including but not limited to any applicable con-
16 dition required under ORS 537.289. A copy of the permit shall be filed as a
17 public record in the department. The permit shall be mailed to the applicant,
18 and upon receipt of the permit the permittee may proceed with the con-
19 struction of the necessary works and may take all action required to apply
20 the water to the designated beneficial use and to perfect the proposed ap-
21 propriation.

1 “(2) Except as provided in subsection [(6)] (7) of this section, if an appli-
2 cation under ORS 537.140 or 537.400 indicates that the applicant does not
3 have written authorization or an easement permitting access to nonowned
4 land crossed by the proposed ditch, canal or other work, the department may
5 issue a final order approving the application if the approval includes a con-
6 dition requiring the applicant to obtain such written authorization, or ease-
7 ment or ownership of such land and to provide the department with a copy
8 of the written authorization, easement or evidence of ownership.

9 “(3) If an application referred to in ORS 537.140 or 537.400 is rejected, the
10 department shall enter a written order setting forth the reasons for the re-
11 jection. The applicant shall take no action toward construction of the works
12 or use of the water. The department shall mail a copy of the order to the
13 applicant.

14 “(4) The holder of a water right permit may change the point of diversion,
15 change the point of appropriation, change the point of diversion to allow the
16 appropriation of ground water or use the water on land to which the right
17 is not appurtenant if:

18 “(a) The use of water on land to which the right is not appurtenant, the
19 change of point of diversion or the change in point of appropriation does not
20 result in injury to an existing water right;

21 “(b) For a proposed change in the place of use of the water, the land on
22 which the water is to be used is owned or controlled by the holder of the
23 permit and is contiguous to the land to which the permit is appurtenant;

24 “(c) All other terms of the permit remain the same, including but not
25 limited to the beneficial use for which the water is used and the number of
26 acres to which water is applied;

27 “(d) Prior approval is obtained from the district if the water is trans-
28 ported or conveyed by an irrigation district organized under ORS chapter
29 545, a drainage district organized under ORS chapter 547, a water improve-
30 ment district organized under ORS chapter 552, a water control district or-

ganized under ORS chapter 553 or a district improvement company or a corporation organized under ORS chapter 554;

“(e) The holder of the permit provides written notice to the department at least 60 days before making any changes to the lands, point of diversion or point of appropriation described in the permit;

“(f) The holder of the permit complies with the publication requirements of ORS 540.520 (5), if applicable;

“(g) Diversion is provided with a proper fish screen, if requested by the State Department of Fish and Wildlife; and

“(h) For a request to transfer the point of diversion to allow the appropriation of ground water, the proposed change meets the standards set forth in ORS 540.531 (2) or (3).

“(5)(a) Paragraphs (b) to (d) of this subsection apply in addition to subsection (4) of this section if:

“(A) The proposed change is to move the point of diversion upstream of the existing point of diversion where there is no existing permanent in-stream water right granted pursuant to a request under ORS 537.336 or an in-stream water right created under ORS 537.346 (1);

“(B) The proposed change is to move the point of appropriation from outside of one-quarter mile of a stream to within one-quarter mile of a stream reach where there is no existing permanent in-stream water right granted pursuant to a request under ORS 537.336 or an in-stream water right created pursuant to ORS 537.346 (1); or

“(C) The proposed change is to move the point of appropriation closer to a stream than the existing point of appropriation, if the existing point of appropriation is within one-quarter mile of a stream reach and the stream reach that the point of appropriation is moving closer to does not have an existing permanent in-stream water right granted pursuant to a request under ORS 537.336 or an in-stream water right created pursuant to ORS 537.346 (1).

1 “(b) A change described in paragraph (a) of this subsection may not
2 be made if the Water Resources Department determines that the
3 change would contribute to a reduction in flow that results in a loss
4 of in-stream habitat for native migratory fish, as defined in ORS
5 509.580, that are members of the family Salmonidae.

6 “(c) The determination described in paragraph (b) of this subsection
7 may not exceed the time required for the department to complete the
8 injury analysis described in subsection (4)(a) of this section. If the
9 department is unable to complete a determination under this para-
10 graph within the time prescribed in this paragraph, paragraph (b) of
11 this subsection may not be taken into account in the department’s
12 review of the application.

13 “(d) The department’s determinations under this subsection must
14 be set forth in an order that contains written findings that adhere to
15 the standards of ORS chapter 183.

16 “(e) This subsection does not apply to:

17 “(A) Applications necessary to implement an aquatic habitat resto-
18 ration or protection project, if sufficient information is included in the
19 application materials to determine, after consultation with the State
20 Department of Fish and Wildlife, that the net effect of the transfer
21 and the aquatic habitat restoration or protection project would be a
22 benefit to relevant impacted sensitive, threatened or endangered fish
23 populations;

24 “(B) Water rights authorizing municipal use, water rights held by
25 a municipality, as defined in ORS 540.510 (3), municipal water rights
26 held by a unit of local government, as defined in ORS 190.003, or mu-
27 nicipal water rights held or managed by an intergovernmental entity
28 created by an intergovernmental agreement under ORS 190.010; or

29 “(C) Applications necessary to address an imminent public health
30 or safety risk.

1 “[5] **(6)** Notwithstanding the requirements of subsection (4)(b) of this
2 section, the holder of a water right permit may change the place of use of
3 all or any portion of water under the permit to land that is not contiguous
4 to the land to which the permit is appurtenant if:

5 “(a) The change to noncontiguous land is in furtherance of mitigation or
6 conservation efforts undertaken for the purposes of benefiting a species listed
7 as sensitive, threatened or endangered under ORS 496.171 to 496.192 or the
8 federal Endangered Species Act of 1973 (16 U.S.C. 1531 to 1544), as deter-
9 mined by the listing agency; and

10 “(b) All other requirements of subsection (4) of this section are met.

11 “[6] **(7)** For an application made by or on behalf of a public corporation,
12 the department may issue a permit approving the application without re-
13 quiring the applicant to obtain prior written authorization or an easement
14 permitting access to nonowned lands affected by the proposed project. How-
15 ever, nothing in this subsection shall be construed to allow any person to
16 trespass on the lands of another person.

17 “[7] **(8)** When the department receives notice under subsection (4)(e) of
18 this section, the department shall publish the notice in the department’s
19 weekly public notice of water right applications.

20 “[8] **(9)** If the use of water under the permit is for operation of a mining
21 operation as defined in ORS 517.952:

22 “(a) Review of the application and approval or denial of the application
23 shall be coordinated with the consolidated application process under ORS
24 517.952 to 517.989. However, such review and approval or denial shall take
25 into consideration all policy considerations for the appropriation of water
26 as set forth in this chapter and ORS chapter 536.

27 “(b) The permit may be issued for exploration under ORS 517.702 to
28 517.740, but the permit shall be conditioned on the applicant’s compliance
29 with the consolidated application process.

30 “(c) The permit shall include a condition that additional conditions may

1 be added to the use of water when a water right certificate is issued, or when
2 the use of water is changed pursuant to ORS 540.520 and 540.530 to use for
3 a mine.

4 “[9] (10) As used in this section, ‘contiguous’ includes land separated
5 from the land to which a water right is appurtenant by roads, utility corri-
6 dors, irrigation ditches or publicly owned rights of way.

7 **“SECTION 2.** ORS 540.510 is amended to read:

8 “540.510. (1)(a) Except as provided in subsections (2) to (8) of this section,
9 all water used in this state for any purpose shall remain appurtenant to the
10 premises upon which it is used and no change in use or place of use of any
11 water for any purpose may be made without compliance with the provisions
12 of ORS 540.520 and 540.530. However, the holder of any water use subject to
13 transfer may, upon compliance with the provisions of ORS 540.520 and
14 540.530, change the use and place of use, the point of diversion or the use
15 of the water without losing priority of the right. A district may change the
16 place of use in the manner provided in ORS 540.572 to 540.580 in lieu of the
17 method provided in ORS 540.520 and 540.530. When an application for change
18 of the use or place of use for a primary water right is submitted in accord-
19 ance with this section, the applicant also shall indicate whether the land
20 described in the application has an appurtenant supplemental water right or
21 permit. If the applicant also intends to transfer the supplemental water right
22 or permit, the applicant also shall include the information required under
23 ORS 540.520 (2) for the supplemental water right or permit. If the applicant
24 does not include the supplemental water right or permit in the transfer ap-
25 plication, the Water Resources Department shall notify the applicant that
26 the supplemental water right or permit will be canceled before the depart-
27 ment issues the order approving the transfer of the primary water right,
28 unless within 30 days the applicant modifies the application to include the
29 supplemental water right or permit or withdraws the application. The de-
30 partment may approve the transfer of the supplemental water right or permit

1 in accordance with the provisions of ORS 540.520 and 540.530. The depart-
2 ment *[shall]* **may** not approve the transfer of a supplemental water right or
3 permit if the transfer would:

4 **“(A) Result in enlargement of the original water right or injury to an**
5 **existing water right; or**

6 **“(B) Contribute to a reduction in flow that results in a loss of in-**
7 **stream habitat for native migratory fish, as defined in ORS 509.580,**
8 **that are members of the family Salmonidae, if the proposed change is**
9 **one or more of the following and is not covered by an exception de-**
10 **scribed in ORS 537.211 (5)(e):**

11 **“(i) The proposed change is to move the point of diversion upstream**
12 **of the existing point of diversion where there is no existing permanent**
13 **in-stream water right granted pursuant to a request under ORS 537.336**
14 **or an in-stream water right created under ORS 537.346 (1);**

15 **“(ii) The proposed change is to move the point of appropriation**
16 **from outside of one-quarter mile of a stream to within one-quarter**
17 **mile of a stream reach where there is no existing permanent in-stream**
18 **water right granted pursuant to a request under ORS 537.336 or an**
19 **in-stream water right created pursuant to ORS 537.346 (1); or**

20 **“(iii) The proposed change is to move the point of appropriation**
21 **closer to a stream than the existing point of appropriation, if the ex-**
22 **isting point of appropriation is within one-quarter mile of a stream**
23 **reach and the stream reach that the point of appropriation is moving**
24 **closer to does not have an existing permanent in-stream water right**
25 **granted pursuant to a request under ORS 537.336 or an in-stream water**
26 **right created pursuant to ORS 537.346 (1).**

27 **“(b) If the department approves the transfer of the primary water right**
28 **but does not approve the transfer of the supplemental water right or permit,**
29 **the department shall notify the applicant of the department’s intent to cancel**
30 **that portion of the supplemental water right or permit described in the**

1 transfer application before the department issues the primary water right
2 transfer order, unless the applicant withdraws the transfer application
3 within 90 days.

4 “[(b)] (c) A holder of a water right certificate that authorizes the storage
5 of water may change the type of use identified in the water right certificate,
6 as described in paragraph (a) of this subsection, without losing priority of
7 the right.

8 “(2) Subject to the limitations in ORS 537.490, any right to the use of
9 conserved water allocated by the Water Resources Commission under ORS
10 537.470 may be severed from the land and transferred or sold after notice to
11 the commission as required under ORS 537.490.

12 “(3)(a) Any water used under a permit or certificate issued to a munici-
13 pality, or under rights conferred by ORS 538.410 to 538.450, or under the
14 registration system set forth in ORS 537.132, may be applied to beneficial use
15 on lands to which the right is not appurtenant if:

16 “(A) The water is applied to lands which are acquired by annexation or
17 through merger, consolidation or formation of a water authority, so long as
18 the rate and use of water allowed in the original certificate is not exceeded;

19 “(B) The use continues to be for municipal purposes and would not in-
20 terfere with or impair prior vested water rights; or

21 “(C) The use is authorized under a permit granted under ORS 468B.050
22 or 468B.053 and for which a reclaimed water registration form has been filed
23 under ORS 537.132.

24 “(b) As used in this subsection, ‘municipality’ means a city, a port formed
25 under ORS 777.005 to 777.725, 777.915 to 777.953 and 778.010, a domestic water
26 supply district formed under ORS chapter 264, a water supplier as defined in
27 ORS 448.115 or a water authority formed under ORS chapter 450.

28 “(4) Pursuant to the provisions of ORS 540.570 or 540.585, any water used
29 under a permit or certificate issued to a district may be applied to beneficial
30 use on lands within the district to which the right is not appurtenant.

1 “(5) The relocation of a point of diversion as necessary to follow the
2 movements of a naturally changing stream channel does not constitute a
3 change in point of diversion for purposes of ORS 540.520 if:

4 “(a) The diversion point stays within 500 feet of the point of diversion on
5 record with the Water Resources Department;

6 “(b) The change does not move the diversion point upstream or down-
7 stream beyond the diversion point of another appropriator; and

8 “(c) The diversion is provided with a proper fish screen, if requested by
9 the State Department of Fish and Wildlife.

10 “(6) In the event that government action results in or creates a reasonable
11 expectation of a change in the surface level of a surface water source that
12 impairs or threatens to impair access to a point of diversion authorized by
13 a water right permit, certificate or decree, the owner of the water right may
14 change the point of diversion or add an additional point of diversion in ac-
15 cordance with the provisions of this section in lieu of complying with the
16 requirements of ORS 540.520 and 540.530. Before changing the point of di-
17 version, the water right owner shall provide written notice of the proposed
18 change to the Water Resources Department. Within 15 days after receipt of
19 such notice, the department shall provide notice by publication in the
20 department’s public notice of water right applications. Within 60 days after
21 the department receives notice from the owner, the Water Resources Direc-
22 tor, by order, shall approve the change unless the director finds the changes
23 will result in injury to other existing water rights. All other terms and
24 conditions of the water right shall remain in effect.

25 “(7) The sale or lease of the right to the use of conserved water under
26 ORS 537.490 does not constitute a change of use or a change in the place of
27 use of water for purposes of ORS 540.520.

28 “(8) Ground water applied to an exempt use as set forth in ORS 537.141
29 or 537.545 may be subsequently applied to land for irrigation purposes under
30 ORS 537.141 (1)(i) or 537.545 (1)(g) without application for a change in use

or place of use under this section.

SECTION 3. ORS 540.520 is amended to read:

“540.520. (1)(a) Except when the application is made under ORS 541.327 or when an application for a temporary transfer is made under ORS 540.523, if the holder of a water use subject to transfer for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires to change the place of use, the point of diversion, or the use made of the water, an application to make such change, as the case may be, shall be filed with the Water Resources Department.

“(b) A holder of a water right certificate that authorizes the storage of water may change the type of use identified in the water right certificate, as described in this section.

“(2) The application required under subsection (1) of this section shall include:

“(a) The name of the owner;

“(b) The previous use of the water;

“(c) A description of the premises upon which the water is used;

“(d) A description of the premises upon which it is proposed to use the water;

“(e) The use that is proposed to be made of the water;

“(f) The reasons for making the proposed change; and

“(g) Evidence that the water has been used over the past five years according to the terms and conditions of the owner’s water right certificate or that the water right is not subject to forfeiture under ORS 540.610.

“(3) If the application required under subsection (1) of this section is necessary to allow a change in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS 541.932, or is approved by the State Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat, the department, at the discretion of the Water Resources Director, may waive or assist the applicant in satisfying

1 the requirements of subsection (2)(c) and (d) of this section. The assistance
2 provided by the department may include, but need not be limited to, devel-
3 opment of an application map.

4 “(4) If the application is to change the point of diversion, the transfer
5 shall include a condition that the holder of the water right provide a proper
6 fish screen at the new point of diversion, if requested by the State Depart-
7 ment of Fish and Wildlife.

8 “(5) Upon the filing of the application the department shall give notice
9 by publication in a newspaper having general circulation in the area in
10 which the water rights are located, for a period of at least two weeks and
11 not less than one publication each week. The notice shall include the date
12 on which the last notice by publication will occur. The cost of the publica-
13 tion shall be paid by the applicant in advance to the department. In appli-
14 cations for only a change in place of use or for a change in the point of
15 diversion of less than [*one-fourth*] **one-quarter** mile, and where there are no
16 intervening diversions between the old diversion of the applicant and the
17 proposed new diversion, no newspaper notice need be published. The depart-
18 ment shall include notice of such applications in the weekly notice published
19 by the department.

20 “(6) Within 30 days after the last publication of a newspaper notice of the
21 proposed transfer or the mailing of the department’s weekly notice, which-
22 ever is later, any person may file, jointly or severally, with the department,
23 a protest against approval of the application.

24 “(7)(a) **Paragraph (b) of this subsection applies** if a timely protest is
25 filed, or in the opinion of the Water Resources Director a hearing is neces-
26 sary to determine whether the proposed changes as described by the appli-
27 cation would:

28 “(A) Result in injury to existing water rights[,]; or

29 “(B) **Contribute to a reduction in flow that results in a loss of in-**
30 **stream habitat for native migratory fish, as defined in ORS 509.580,**

1 that are members of the family Salmonidae, if the proposed change is
2 one or more of the following and is not covered by an exception de-
3 scribed in ORS 537.211 (5)(e):

4 “(i) The proposed change is to move the point of diversion upstream
5 of the existing point of diversion where there is no existing permanent
6 in-stream water right granted pursuant to a request under ORS 537.336
7 or an in-stream water right created under ORS 537.346 (1);

8 “(ii) The proposed change is to move the point of appropriation
9 from outside of one-quarter mile of a stream to within one-quarter
10 mile of a stream reach where there is no existing permanent in-stream
11 water right granted pursuant to a request under ORS 537.336 or an
12 in-stream water right created pursuant to ORS 537.346 (1); or

13 “(iii) The proposed change is to move the point of appropriation
14 closer to a stream than the existing point of appropriation, if the ex-
15 isting point of appropriation is within one-quarter mile of a stream
16 reach and the stream reach that the point of appropriation is moving
17 closer to does not have an existing permanent in-stream water right
18 granted pursuant to a request under ORS 537.336 or an in-stream water
19 right created pursuant to ORS 537.346 (1).

20 “(b) The department shall hold a hearing on the matter. Notice and
21 conduct of the hearing shall be under the provisions of ORS chapter 183,
22 pertaining to contested cases, and shall be held in the area where the rights
23 are located unless all parties and persons who filed a protest under this
24 subsection stipulate otherwise. **Any person who disagrees with a depart-**
25 **ment finding under paragraph (a)(B) of this subsection has the burden**
26 **of proving, by a preponderance of the evidence, that a different finding**
27 **is warranted. A hearing is not required if:**

28 “(A) All issues in the contested case are resolved pursuant to a
29 settlement;

30 “(B) The protest is withdrawn; or

1 **“(C) The protestant defaults.**

2 “(8) An application for a change of use under this section is not required
3 if the beneficial use authorized by the water use subject to transfer is irri-
4 gation and the owner of the water right uses the water for incidental agri-
5 cultural, stock watering and other uses related to irrigation use, so long as
6 there is no increase in the rate, duty, total acreage benefited or season of
7 use.

8 “(9) A water right transfer under subsection (1) of this section is not re-
9 quired for a general industrial use that was not included in a water right
10 certificate issued for a specific industrial use if:

11 “(a) The quantity of water used for the general industrial use is not
12 greater than the rate allowed in the original water right and not greater
13 than the quantity of water diverted to satisfy the authorized specific use
14 under the original water right;

15 “(b) The location where the water is to be used for general industrial use
16 was owned by the holder of the original water right at the time the water
17 right permit was issued; and

18 “(c) The person who makes the change in water use provides the following
19 information to the Water Resources Department:

20 “(A) The name and mailing address of the person using water under the
21 water right;

22 “(B) The water right certificate number;

23 “(C) A description of the location of the industrial facility owned by the
24 holder of the original water right at the time the water right permit was
25 issued; and

26 “(D) A description of the general industrial use to be made of the water
27 after the change.

28 **“SECTION 4. ORS 540.523 is amended to read:**

29 “540.523. (1) In accordance with the provisions of this section, any person
30 who holds a water use subject to transfer may request that the Water Re-

1 sources Department approve the temporary transfer of place of use and, if
2 necessary to convey water to the new temporary place of use, temporarily
3 change the point of diversion or point of appropriation for a period not to
4 exceed five years. An application for a temporary transfer shall:

5 “(a) Be submitted in writing to the Water Resources Department;

6 “(b) Be accompanied by the appropriate fee for a change in the place of
7 use as set forth in ORS 536.050;

8 “(c) Include the information required under ORS 540.520 (2); and

9 “(d) Include any other information the Water Resources Commission by
10 rule may require.

11 “(2) Notwithstanding the notice and waiting requirements under ORS
12 540.520, the department shall approve by order a request for a temporary
13 transfer under this section if the department determines that the temporary
14 transfer will not:

15 “(a) Injure any existing water right; or

16 “(b) **Contribute to a reduction in flow that results in a loss of in-**
17 **stream habitat for native migratory fish, as defined in ORS 509.580,**
18 **that are members of the family Salmonidae, if the proposed change is**
19 **not covered by an exception described in ORS 537.211 (5)(e) and is to**
20 **move the point of diversion upstream of the existing point of diversion**
21 **on a stream reach where there is no existing permanent in-stream**
22 **water right granted pursuant to a request under ORS 537.336 or an**
23 **in-stream water right created pursuant to ORS 537.346 (1).**

24 “(3)(a) **The order of the department under subsection (2)(b) of this**
25 **section must contain written findings that adhere to the standards of**
26 **ORS chapter 183.**

27 “(b) **Before denying an application for a temporary transfer on the**
28 **grounds that subsection (2)(b) of this section does not permit the de-**
29 **partment to approve the application, the department shall offer con-**
30 **ditions that would allow the application to be approved if the**

1 **conditions were accepted by the applicant.**

2 “[3)] (4) All uses of water for which a temporary transfer is allowed un-
3 der this section shall revert automatically to the terms and conditions of the
4 water use subject to transfer upon expiration of the temporary transfer pe-
5 riod.

6 “[4)] (5) The time during which water is used under an approved tempo-
7 rary transfer order does not apply toward a finding of forfeiture under ORS
8 540.610.

9 “[5)] (6) The department may revoke a prior approval of the temporary
10 transfer at any time if the department finds that the transfer:

11 **“(a) Is causing injury to any existing water right; or**

12 **“(b) For water rights not covered under ORS 537.211 (5)(e)(B), re-**
13 **sults in a loss of in-stream habitat for native migratory fish, as de-**
14 **fin ed in ORS 509.580, that are members of the family Salmonidae.**

15 “[6)] (7) Any map that may be required under subsection (1) of this sec-
16 tion need not be prepared by a certified water right examiner.

17 “[7)] (8) The lands from which the water right is removed during the
18 period of a temporary transfer shall receive no water under the transferred
19 water right.

20 “[8)] (9) When an application for a temporary change of the place of use
21 for a primary water right is submitted in accordance with this section, the
22 applicant also shall indicate whether the land described in the application
23 has an appurtenant supplemental water right or permit. If the applicant also
24 intends to temporarily transfer the supplemental water right or permit, the
25 applicant also shall include the information required under ORS 540.520 (2)
26 for the supplemental water right or permit. If the applicant does not include
27 the supplemental water right or permit in the temporary transfer application,
28 the Water Resources Department shall notify the applicant that the supple-
29 mental water right or permit will be canceled before the department issues
30 the order approving the temporary transfer of the primary water right, unless

1 within 30 days the applicant modifies the application to include the supple-
2 mental water right or permit or withdraws the application. The department
3 may approve the temporary transfer of the supplemental water right or per-
4 mit in accordance with the provisions of this section. The department may
5 not approve the temporary transfer of a supplemental water right or permit
6 if the temporary transfer would result in enlargement of the original water
7 right or injury to an existing water right. If the department approves the
8 temporary transfer of the primary water right but does not approve the
9 temporary transfer of the supplemental water right or permit, the department
10 shall notify the applicant of the department's intent not to allow the tem-
11 porary transfer of the supplemental water right or permit before the depart-
12 ment issues the order for the temporary transfer of the primary water right.
13 If the department does not allow the temporary transfer of the supplemental
14 right, the supplemental right shall remain appurtenant to the land described
15 in the application, but may not be exercised until the primary right reverts
16 to the original water use. If the primary water right does not revert soon
17 enough to allow use of water under the supplemental right within five years,
18 the supplemental right shall become subject to cancellation for nonuse under
19 ORS 540.610.

20 “[9] (10) In issuing an order under subsection (2) of this section, the
21 department shall include any condition necessary to protect other water
22 rights.

23 **“SECTION 5.** ORS 540.530 is amended to read:

24 “540.530. (1)(a) **The Water Resources Commission shall make an or-**
25 **der approving the transfer and fixing a time limit within which the**
26 **approved changes may be completed** if, after hearing or examination, the
27 [Water Resources] commission finds that a proposed change can be effected
28 without:

29 **“(A)** Injury to existing water rights[, *the commission shall make an order*
30 *approving the transfer and fixing a time limit within which the approved*

1 *changes may be completed.]; or*

2 **“(B) Contribution to a reduction in flow that results in a loss of**
3 **in-stream habitat for native migratory fish, as defined in ORS 509.580,**
4 **that are members of the family Salmonidae, if the proposed change is**
5 **one or more of the following and is not covered by an exception de-**
6 **scribed in ORS 537.211 (5)(e):**

7 **“(i) The proposed change is to move the point of diversion upstream**
8 **of the existing point of diversion where there is no existing permanent**
9 **in-stream water right granted pursuant to a request under ORS 537.336**
10 **or an in-stream water right created under ORS 537.346 (1);**

11 **“(ii) The proposed change is to move the point of appropriation**
12 **from outside of one-quarter mile of a stream to within one-quarter**
13 **mile of a stream reach where there is no existing permanent in-stream**
14 **water right granted pursuant to a request under ORS 537.336 or an**
15 **in-stream water right created pursuant to ORS 537.346 (1); or**

16 **“(iii) The proposed change is to move the point of appropriation**
17 **closer to a stream than the existing point of appropriation, if the ex-**
18 **isting point of appropriation is within one-quarter mile of a stream**
19 **reach and the stream reach that the point of appropriation is moving**
20 **closer to does not have an existing permanent in-stream water right**
21 **granted pursuant to a request under ORS 537.336 or an in-stream water**
22 **right created pursuant to ORS 537.346 (1).**

23 **“(b) If, after hearing or examination, the commission finds that a proposed**
24 **change in point of diversion cannot be effected without injury to existing**
25 **water rights, upon receipt by the commission of an affidavit consenting to**
26 **the change from every holder of an affected water right, the commission may**
27 **make an order approving the transfer and fixing a time limit within which**
28 **the approved changes may be completed.**

29 **“(c) If, after hearing or examination, the commission finds that a proposed**
30 **change in point of diversion cannot be effected without injury to an in-**

1 stream water right granted pursuant to a request under ORS 537.336 or an
2 in-stream water right created pursuant to ORS 537.346 (1), the Water Re-
3 sources Department may consent to the change only upon a recommendation
4 that the department do so from the agency that requested the in-stream wa-
5 ter right. The agency that requested the in-stream water right may recom-
6 mend that the department consent to the change only if the change will
7 result in a net benefit to the resource consistent with the purposes of the
8 in-stream water right.

9 **“(d) The order of the commission, if related to a determination**
10 **under paragraph (a)(B) of this subsection, must contain written**
11 **findings that adhere to the standards of ORS chapter 183.**

12 “[*(d)(A)*] **(e)(A)** If an in-stream water right would be injured by a pro-
13 posed change under paragraph (c) of this subsection, the department shall
14 obtain a recommendation from the agency that requested the in-stream water
15 right. If the recommendation of the agency is to consent to the change, the
16 department shall provide public notice of the recommendation and, consistent
17 with state laws regarding cooperation with Indian tribes in the development
18 and implementation of state agency programs that affect tribes or rights and
19 privileges of tribes, the department shall consult with affected Indian tribes.

20 **“(B)** The recommendation of an agency under this paragraph must be in
21 writing and, if the recommendation is to consent to the change, must de-
22 scribe the extent of the injury to the in-stream water right, the effect on the
23 resource and the net benefit that will occur as a result of the proposed
24 change. The recommendation may include any proposed conditions that are
25 necessary to ensure that the proposed change will be consistent with the
26 recommendation.

27 **“(C)** In determining whether a net benefit will result from the proposed
28 change, the recommendation of an agency must include an analysis of the
29 cumulative impact of any previous changes under paragraphs (b) and (c) of
30 this subsection that allow injury to the affected in-stream water right.

1 “(D) A person may comment on the recommendation of an agency. The
2 comment must be in writing and must be received by the department within
3 30 days after publication of notice under this paragraph. If a written com-
4 ment received by the department requests a meeting on the proposed change,
5 the department and the agency that requested the in-stream water right shall
6 hold a joint public meeting within 90 days of the receipt of the comment
7 requesting a meeting.

8 “[~~(e)~~(A)] **(f)(A)** If, after review of public comments and consultation with
9 the agency that requested the in-stream water right, the agency that re-
10 quested the in-stream water right does not withdraw its recommendation to
11 consent to the change, the department may approve the change consistent
12 with the requirements of paragraphs (b) and (c) of this subsection.

13 “(B) An order approving a change under paragraph (c) of this subsection
14 shall include written findings on the extent of the injury to the in-stream
15 water right, the effect on the resource and the net benefit that will occur
16 as a result of the change. The order shall include any conditions necessary
17 to ensure that the change will be consistent with the findings and ensure
18 that the change will result in a continued net benefit to the resource con-
19 sistent with the purposes of the in-stream water right.

20 “(C) In determining whether a net benefit will result from the change, the
21 order of the department must include an analysis of the cumulative impact
22 of any previous changes approved under paragraphs (b) and (c) of this sub-
23 section that allow injury to the affected in-stream water right.

24 “[~~(f)~~] **(g)** The time allowed by the commission for completion of an au-
25 thorized change under paragraphs (a) to [~~(e)~~] **(f)** of this subsection may not
26 be used when computing a five-year period of nonuse under the provisions
27 of ORS 540.610 (1).

28 “(2)(a) If a certificate covering the water right has been previously issued,
29 the commission shall cancel the previous certificate or, if for an irrigation
30 district, the commission may modify the previous certificate and, when

proper proof of completion of the authorized changes has been filed with the commission, issue a new certificate or, if for an irrigation district, modify the previous certificate, preserving the previously established priority of rights and covering the authorized changes. If only a portion of the water right covered by the previous certificate is affected by the changes, a separate new certificate may be issued to cover the unaffected portion of the water right.

“(b) If the change authorized under subsection (1) of this section is necessary to allow a change in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS 541.932, or is approved by the State Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat, the Water Resources Department, at the discretion of the Water Resources Director, may waive or assist the applicant in satisfying any of the proof of completion requirements of paragraph (a) of this subsection. The assistance provided by the department may include, but need not be limited to, development of a final proof survey map and claim of beneficial use.

“(3) Upon receiving notification of the merger or consolidation of municipal water supply entities, or the formation of a water authority under ORS chapter 450, the commission shall cancel the previous certificates of the entities replaced by the merger, consolidation or formation and issue a new certificate to the newly formed municipality or water authority. The new certificate shall preserve the previously established priority of rights of the replaced entities and shall allow beneficial use of the water on any lands acquired in the merger, consolidation or formation.

“SECTION 6. ORS 540.531 is amended to read:

“540.531. (1) Notwithstanding ORS 537.515 and 537.535, an owner of a surface water use subject to transfer may apply for a transfer of the point of diversion to allow the appropriation of ground water if the proposed transfer complies with the requirements of subsection (2) or (3) of this sec-

tion and with the requirements for a transfer in point of diversion specified in ORS 540.520 and 540.530.

“(2) The Water Resources Department may allow a transfer of the point of diversion under subsection (1) of this section if:

“(a)(A) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface water source;

“(B) The proposed change in point of diversion will not:

“(i) Result in enlargement of the original water right or in injury to other water right holders; **or**

“(ii) **Contribute to a reduction in flow that results in a loss of in-stream habitat for native migratory fish, as defined in ORS 509.580, that are members of the family Salmonidae, if the proposed change is one or more of the following and is not covered by an exception described in ORS 537.211 (5)(e):**

“(I) **The proposed change is to move the point of diversion upstream of the existing point of diversion where there is no existing permanent in-stream water right granted pursuant to a request under ORS 537.336 or an in-stream water right created under ORS 537.346 (1);**

“(II) **The proposed change is to move the point of appropriation from outside of one-quarter mile of a stream to within one-quarter mile of a stream reach where there is no existing permanent in-stream water right granted pursuant to a request under ORS 537.336 or an in-stream water right created pursuant to ORS 537.346 (1); or**

“(III) **The proposed change is to move the point of appropriation closer to a stream than the existing point of appropriation, if the existing point of appropriation is within one-quarter mile of a stream reach and the stream reach that the point of appropriation is moving closer to does not have an existing permanent in-stream water right granted pursuant to a request under ORS 537.336 or an in-stream water**

1 **right created pursuant to ORS 537.346 (1).**

2 “(C) The use of the new point of diversion will affect the surface water
3 source similarly to the authorized point of diversion specified in the water
4 use subject to transfer; and

5 “(D) The withdrawal of ground water at the new point of diversion is lo-
6 cated within 500 feet of the surface water source and, when the surface water
7 source is a stream, is also located within 1,000 feet upstream or downstream
8 of the original point of diversion as specified in the water use subject to
9 transfer; or

10 “(b) The new point of diversion is not located within the distance re-
11 quirements set forth in paragraph (a)(D) of this subsection, the holder of the
12 water use subject to transfer submits to the department evidence prepared
13 by a licensed geologist that demonstrates that the use of the ground water
14 at the new point of diversion will meet the criteria set forth in paragraph
15 (a)(A) to (C) of this subsection.

16 “(3) Notwithstanding subsection (2) of this section, the department shall
17 allow a transfer of the point of diversion under subsection (1) of this section
18 in the Deschutes Basin ground water study area if:

19 “(a) The new point of diversion appropriates ground water from an aquifer
20 that is hydraulically connected to the authorized surface water source;

21 “(b) The proposed change in the point of diversion will not:

22 “(A) Result in enlargement of the original water right or in injury to
23 other water right holders; **or**

24 “(B) **Contribute to a reduction in flow that results in a loss of in-**
25 **stream habitat for native migratory fish, as defined in ORS 509.580,**
26 **that are members of the family Salmonidae, if the proposed change is**
27 **one or more of the following and is not covered by an exception de-**
28 **scribed in ORS 537.211 (5)(e):**

29 “(i) **The proposed change is to move the point of diversion upstream**
30 **of the existing point of diversion where there is no existing permanent**

1 **in-stream water right granted pursuant to a request under ORS 537.336**
2 **or an in-stream water right created under ORS 537.346 (1);**

3 **“(ii) The proposed change is to move the point of appropriation**
4 **from outside of one-quarter mile of a stream to within one-quarter**
5 **mile of a stream reach where there is no existing permanent in-stream**
6 **water right granted pursuant to a request under ORS 537.336 or an**
7 **in-stream water right created pursuant to ORS 537.346 (1); or**

8 **“(iii) The proposed change is to move the point of appropriation**
9 **closer to a stream than the existing point of appropriation, if the ex-**
10 **isting point of appropriation is within one-quarter mile of a stream**
11 **reach and the stream reach that the point of appropriation is moving**
12 **closer to does not have an existing permanent in-stream water right**
13 **granted pursuant to a request under ORS 537.336 or an in-stream water**
14 **right created pursuant to ORS 537.346 (1); and**

15 **“(c) The use of the new point of diversion will affect the surface water**
16 **source hydraulically connected to the authorized point of diversion specified**
17 **in the water use subject to transfer. The department may not require that**
18 **the use of the new point of diversion affect the surface water source simi-**
19 **larly to the authorized point of diversion specified in the water use subject**
20 **to transfer under this subsection.**

21 **“(4) All applicable restrictions that existed at the original point of di-**
22 **version shall apply at the new point of diversion allowed under this section.**

23 **“(5) The new point of diversion shall retain the original date of priority.**
24 **However, if within five years after approving the transfer, the department**
25 **finds that the transfer results in substantial interference with existing**
26 **ground water rights that would not have occurred in the absence of the**
27 **transfer, the new point of diversion shall be subordinate to any existing right**
28 **injured by the transferred water right or permit.**

29 **“(6)(a) The department shall approve an application to return to the last**
30 **authorized surface water point of diversion if a holder of a water use subject**

1 to transfer submits an application to the department within five years after
2 the department approves a transfer under this section.

3 “(b) The department shall approve an application to return to the last
4 authorized surface water point of diversion after five years of the date the
5 department allows a transfer under subsection (3) of this section if:

6 “(A) A holder of a water use subject to transfer submits an application
7 to the department[,]; and

8 “(B) The return will not:

9 “(i) Result in injury to an existing water right; or

10 “(ii) **Contribute to a reduction in flow that results in a loss of in-**
11 **stream habitat for native migratory fish, as defined in ORS 509.580,**
12 **that are members of the family Salmonidae, if the proposed change is**
13 **one or more of the following and is not covered by an exception de-**
14 **scribed in ORS 537.211 (5)(e):**

15 “(I) **The proposed change is to move the point of diversion upstream**
16 **of the existing point of diversion where there is no existing permanent**
17 **in-stream water right granted pursuant to a request under ORS 537.336**
18 **or an in-stream water right created under ORS 537.346 (1);**

19 “(II) **The proposed change is to move the point of appropriation**
20 **from outside of one-quarter mile of a stream to within one-quarter**
21 **mile of a stream reach where there is no existing permanent in-stream**
22 **water right granted pursuant to a request under ORS 537.336 or an**
23 **in-stream water right created pursuant to ORS 537.346 (1); or**

24 “(III) **The proposed change is to move the point of appropriation**
25 **closer to a stream than the existing point of appropriation, if the ex-**
26 **isting point of appropriation is within one-quarter mile of a stream**
27 **reach and the stream reach that the point of appropriation is moving**
28 **closer to does not have an existing permanent in-stream water right**
29 **granted pursuant to a request under ORS 537.336 or an in-stream water**
30 **right created pursuant to ORS 537.346 (1).**

1 “(7) For transfers allowed under this section, the department shall require
2 mitigation measures to prevent depletion from any surface water source not
3 specified in the permit or certificated or decreed water right, except that the
4 department may not require mitigation measures if the transfer complies
5 with subsection (3) of this section.

6 **“(8) The department’s determinations shall be set forth in an order
7 that contains written findings that adhere to the standards of ORS
8 chapter 183 if the determinations are made under:**

9 **“(a) Subsection (2)(a)(B)(ii) of this section;**

10 **“(b) Subsection (3)(b)(B) of this section; or**

11 **“(c) Subsection (6)(b)(B)(ii) of this section.**

12 **“[(8)] (9) The Water Resources Commission shall adopt rules that pre-**
13 **scribe:**

14 **“(a) The process for reviewing applications submitted under this section;**

15 **“(b) The persons to whom the department shall provide notice of the re-**
16 **ceipt of an application submitted under this section; and**

17 **“(c) The persons who may participate in the process of reviewing appli-**
18 **cations submitted under this section.**

19 **“[(9)] (10) As used in this section:**

20 **“(a) ‘Deschutes Basin ground water study area’ means the part of the**
21 **Deschutes River Basin that is designated by the Water Resources Commis-**
22 **sion by rule.**

23 **“(b) ‘Similarly’ means that the use of ground water at the new point of**
24 **diversion affects the surface water source specified in the permit or certif-**
25 **icated or decreed water right and would result in stream depletion of at least**
26 **50 percent of the rate of appropriation within 10 days of continuous pumping.**

27
28 **“TRIBAL CONSULTATION ON WATER RIGHT**
29 **TRANSFER APPLICATIONS**
30

1 **“SECTION 7.** Section 8 of this 2025 Act is added to and made a part
2 **of ORS chapter 540.**

3 **“SECTION 8.** (1) As used in this section and section 10 of this 2025
4 **Act:**

5 **“(a) ‘Consultation’ means formal communication between the Wa-**
6 **ter Resources Department and a tribe that aims, but is not required,**
7 **to obtain the free, prior and informed consent of the tribe with respect**
8 **to any water right transfer application submitted to the department**
9 **under ORS 540.505 to 540.585 that may affect the sovereign rights,**
10 **privileges and interests of the tribe in the waters of this state, in-**
11 **cluding but not limited to treaty-protected rights.**

12 **“(b) ‘Tribe’ means a federally recognized Indian tribe in this state.**

13 **“(2) If requested by a tribe, the department shall engage in consul-**
14 **tation with the tribe to, pursuant to ORS chapter 190, develop and**
15 **enter into an intergovernmental agreement with the tribe that sets**
16 **forth a consultation protocol for water right transfer applications in**
17 **areas of the state that may affect the sovereign rights, privileges and**
18 **interests of the tribe in the waters of this state, including but not**
19 **limited to treaty-protected water rights. The department shall seek to**
20 **ensure that the consultation process gives due regard to the sovereign**
21 **nature of the concerns raised by the tribe and develops processes with**
22 **consideration for the capacity of the tribe and the department, while**
23 **not unreasonably delaying the processing of any water right transfer**
24 **application. Unless the applicant consents, the department may not**
25 **extend the consultation process on any water right transfer applica-**
26 **tion beyond 90 days after the department notifies the tribe of com-**
27 **pletion of the watermaster review and, if applicable, the groundwater**
28 **review, and makes copies of those reviews available to the tribe.**

29 **“(3)(a) A tribe may protest, under ORS 540.505 to 540.585, 540.587 and**
30 **540.589, a preliminary determination or order of the department for**

1 any water right change application under ORS chapter 537 or 540 for
2 which a protest opportunity is provided by the department or required
3 by law. If the tribe was consulted on the application, the department
4 shall serve the tribe with any preliminary determination or order at
5 the same time and in the same manner as a preliminary determination
6 or order is served on the applicant.

7 “(b) A right to protest under this subsection does not alter or di-
8 minish any other opportunity a tribe may have to protest a determi-
9 nation or order described in this section.

10
11 **“DEPARTMENT AUTHORITY TO CONDITION TRANSFERS**

12
13 **“SECTION 9. Section 10 of this 2025 Act is added to and made a part**
14 **of ORS chapter 540.**

15 **“SECTION 10. (1) The Water Resources Department may condition**
16 **a transfer described in this chapter with any of the following:**

17 **“(a) Water use measurement and reporting.**

18 **“(b) Water level measurement and reporting.**

19 **“(c) The installation of fish screening or by-pass devices.**

20 **“(d) Measures to avoid or minimize injury to the sovereign rights,**
21 **privileges and interests of a tribe in the waters of this state, including**
22 **but not limited to treaty-protected rights.**

23 **“(e) Measures to avoid or minimize the loss of in-stream habitat for**
24 **sensitive, threatened or endangered species in a stream reach that is**
25 **not protected by existing in-stream water rights, only to the extent**
26 **review of the proposed transfer indicates that the transfer will con-**
27 **tribute to a loss of in-stream habitat.**

28 **“(f) Measures to prevent injury or enlargement of a water right or**
29 **to ensure that a water right transfer is from the same source.**

30 **“(g) If a transfer is from a well, measures to ensure that well con-**

struction standards are met.

“(2) The authority granted by subsection (1) of this section applies only to that portion of a water right that is the subject of a transfer application.

“(3) Upon the request of an applicant for a transfer of a water right and only if review of the proposed transfer indicates that a transfer will impair in-stream habitat for sensitive, threatened or endangered fish species or water quality, the department may include, as condition of approval of the transfer, mitigation measures that are proportional to the reduction in flow or water quality impact, in lieu of any conditions described in subsection (1)(e) of this section.

“(4) Subsection (1)(e) of this section does not apply to water rights authorizing municipal use, water rights held by a municipality, as defined in ORS 540.510 (3), municipal water rights held by a unit of local government, as defined in ORS 190.003, or municipal water rights held or managed by an intergovernmental entity created by an intergovernmental agreement under ORS 190.010.

“UNIFORM PROCESS FOR CONTESTED CASES

“SECTION 11. Section 12 of this 2025 Act is added to and made a part of ORS chapter 536.

“SECTION 12. (1) As used in this section, ‘contested case’ has the meaning given that term in ORS 183.310.

“(2) This section and rules adopted thereunder apply to a contested case proceeding under a provision of ORS 537.211, 540.510, 540.520, 540.523, 540.530 or 540.531 or section 8 or 10 of this 2025 Act.

“(3) The Water Resources Department, in consultation with the Office of Administrative Hearings, shall establish one or more default hearing schedules that govern contested case hearings and provide

1 that the process, from a referral for a hearing to a completion of the
2 hearing, must be completed in not more than 180 days, except as pro-
3 vided in subsection (4) of this section. The default schedule must in-
4 clude deadlines for discovery requests and responses and motions to
5 compel discovery and may include other deadlines.

6 “(4) The Office of Administrative Hearings may allow an extension
7 of the hearing schedule only under the following circumstances:

8 “(a) The department, after consulting with the parties, requests a
9 different schedule for a particular contested case;

10 “(b) The chief administrative law judge, upon referral, determines
11 that adhering to the default schedule is not feasible in a particular
12 contested case; or

13 “(c) The administrative law judge assigned to the case determines
14 that modifying the default schedule for a particular contested case
15 serves the public interest, is necessary to provide due process or is in
16 the interest of justice.

17
18 **“RULEMAKING AUTHORITY FOR GENERAL AUTHORIZATION**
19 **APPROVALS OF TRANSFER APPLICATIONS**

20
21 **“SECTION 13.** The Water Resources Commission may adopt rules
22 to establish categories of transfer applications under ORS chapter 540,
23 or applications to change a water right under ORS chapter 537, that
24 are eligible for limited review or programmatic approval. The com-
25 mission may establish categories based on whether the transfer appli-
26 cation characteristics are substantially similar in nature and have
27 predictable effects and outcomes. The commission may establish
28 standard terms and conditions for a category to ensure that current
29 standards for approval of a transfer or application are subject to lim-
30 ited review or programmatic approval.

1 **“BASIN RULES**

2

3 **“SECTION 14. Basin program administrative rules adopted by the**
4 **Water Resources Department pursuant to the department’s**
5 **rulemaking authority under ORS chapter 536 and 537 apply to transfers**
6 **subject to ORS 537.211, 540.510, 540.520, 540.523, 540.530 or 540.531 or**
7 **section 8 or 10 of this 2025 Act.**

8

9 **“FUNDING REIMBURSEMENT**

10

11 **“SECTION 15. (1) Section 10 of this 2025 Act and the amendments**
12 **to ORS 537.211, 540.510, 540.520, 540.523, 540.530 and 540.531 by sections**
13 **1 to 6 of this 2025 Act may not be considered recompensable assistance**
14 **under ORS 496.167.**

15 **“(2) Notwithstanding subsection (1) of this section, the Water Re-**
16 **sources Department and the State Department of Fish and Wildlife**
17 **may elect to enter into an agreement under which the Water Re-**
18 **sources Department compensates the State Department of Fish and**
19 **Wildlife for services provided to the Water Resources Department un-**
20 **der section 10 of this 2025 Act and the amendments to ORS 537.211,**
21 **540.510, 540.520, 540.523, 540.530 and 540.531 by sections 1 to 6 of this 2025**
22 **Act.**

23

24 **“IN-STREAM TRANSFERS AND LEASES**

25

26 **“SECTION 16. ORS 537.348 is amended to read:**

27 **“537.348. (1) Any person may purchase or lease all or a portion of an ex-**
28 **isting water right or accept a gift of all or a portion of an existing water**
29 **right for conversion to an in-stream water right. Any water right converted**
30 **to an in-stream water right under this section shall retain the priority date**

1 of the water right purchased, leased or received as a gift. At the request of
2 the person the Water Resources Commission shall issue a new certificate for
3 the in-stream water right showing the original priority date of the purchased,
4 gifted or leased water right. Except as provided in subsections (2) to (6) of
5 this section, a person who transfers a water right by purchase, lease or gift
6 under this subsection shall comply with the requirements for the transfer of
7 a water right under ORS 540.505 to 540.585.

8 “(2) Subject to subsections (3) to (6) of this section, any person who has
9 an existing water right may lease all or a portion of the existing water right
10 for use as an in-stream water right for a specified period without the loss
11 of the original priority date. During the term of the lease, the use of the
12 water right as an in-stream water right shall be considered a beneficial use.
13 The term of the lease may not exceed five years. The term of the lease may
14 be renewed. There is no limitation on the number of times that the lease
15 may be renewed.

16 “(3) A lease of all or a portion of an existing water right for use as an
17 in-stream water right under subsection (2) of this section may allow the split
18 use of the water between the existing water right and the in-stream water
19 right during the same calendar year, provided:

20 “(a) The uses of the existing water right and the in-stream water right
21 are not concurrent; and

22 “(b) The holders of the water rights measure and report to the Water
23 Resources Department the use of the existing water right and the in-stream
24 water right.

25 “(4) A person who has an existing water right and wishes to lease the
26 water right as described in subsection (2) of this section must file a request
27 and obtain department approval of the lease. Upon receipt of the request, the
28 department shall provide notice of the request by inclusion in the weekly
29 notice published by the department. Any allegation of injury must be deliv-
30 ered to the department no later than 21 days after publication of the request

1 in the weekly notice.

2 “(5) After publishing notice of a request made under subsection (2) of this
3 section and allowing time for the delivery of allegations of injury, the de-
4 partment shall issue an order approving the request if the department finds
5 that the leasing of the water right for in-stream use can be effected without
6 injury to other existing water rights or can be conditioned to prevent injury
7 to other existing water rights. If the lease is for the split use of water be-
8 tween the existing water right and the in-stream water right during the same
9 calendar year, the conditions imposed in the order approving the request
10 must include, but need not be limited to, compliance with subsection (3) of
11 this section.

12 “(6) The department at any time may revoke or modify an order issued for
13 a lease under subsection (2) of this section if the department determines that
14 the use of the water right for in-stream use under the lease has resulted in
15 or may result in injury to an existing water right.

16 **“(7) A request to lease a water right that is made under this section**
17 **may not be evaluated under ORS 537.211 (5)(b), 540.510 (1)(a)(B), 540.520**
18 **(7)(a)(B), 540.523 (2)(b) or (6)(b), 540.530 (1)(a)(B) or 540.531 (2)(a)(B)(ii).**

19 **“SECTION 17.** ORS 537.465 is amended to read:

20 “537.465. (1) Any person or group of persons holding a water use subject
21 to transfer as defined in ORS 540.505 may submit an application to the Water
22 Resources Commission for approval of an allocation of conserved water for
23 a measure that:

24 “(a) The person or group of persons intends to implement; or

25 “(b) Was implemented by the person or group of persons within five years
26 prior to the submission of the application.

27 “(2) An application submitted under subsection (1)(a) of this section shall
28 include:

29 “(a) A description of the proposed measures;

30 “(b) A description of the existing diversion facilities and an estimate of

1 the amount of water that can be diverted at the facilities;

2 “(c) The amount of water that will be needed to supply existing rights
3 after implementation of the conservation measures;

4 “(d) The amount of conserved water expected from implementation of the
5 conservation measures;

6 “(e) The proposed allocation and use of the conserved water if different
7 from the allocation specified in ORS 537.470;

8 “(f) The intended use of any water allocated to the applicant;

9 “(g) The applicant’s choice of priority date for the conserved water; and

10 “(h) Any other information the commission considers necessary to evalu-
11 ate the effectiveness of the proposal.

12 “(3) An application under subsection (1)(b) of this section shall include:

13 “(a) A description of the measure as implemented and the date on which
14 the measure was implemented;

15 “(b) A description of the diversion facilities before the conservation
16 measure was implemented and the amount of water that was diverted at the
17 facilities before the conservation measure was implemented;

18 “(c) The amount of water needed to supply existing rights after imple-
19 mentation of the conservation measure;

20 “(d) The amount of water conserved by implementing the conservation
21 measure;

22 “(e) The proposed allocation and use of the conserved water if different
23 from the allocation specified in ORS 537.470;

24 “(f) The intended use of any water allocated to the applicant;

25 “(g) The applicant’s choice of priority date for the conserved water;

26 “(h) Evidence that the measure was implemented within five years prior
27 to the date of filing the application; and

28 “(i) Any other information the commission considers necessary to evalu-
29 ate the application.

30 “(4) If a person proposes conservation measures within the boundaries of

1 an irrigation district organized under ORS chapter 545 or a water control
2 district organized under ORS chapter 553, at the time the person submits the
3 application, the person also must submit evidence that the district has ap-
4 proved the conservation application.

5 **“(5) An application made under this section may not be evaluated**
6 **under ORS 537.211 (5)(b), 540.510 (1)(a)(B), 540.520 (7)(a)(B), 540.523 (2)(b)**
7 **or (6)(b), 540.530 (1)(a)(B) or 540.531 (2)(a)(B)(ii).**

8
9 **“CONFORMING AMENDMENTS**

10
11 **“SECTION 18.** Section 1, chapter 445, Oregon Laws 2015, is amended to
12 read:

13 **“Sec. 1.** (1) As used in this section, ‘determined claim’ means a water
14 right in the Upper Klamath Basin determined and established in an order
15 of determination certified by the Water Resources Director under ORS
16 539.130.

17 **“(2)** Except as provided in subsections (3) and (4) of this section, during
18 the period that judicial review of the order of determination is pending, a
19 determined claim is:

20 **“(a)** An existing water right that may be leased for a term as provided
21 under ORS 537.348; and

22 **“(b)** A primary water right that is subject to temporary transfer for pur-
23 poses of ORS 540.523.

24 **“(3)** Subsection (2) of this section:

25 **“(a)** Does not apply to a water right determined and established in an
26 order of determination that has been stayed by the filing of a bond or
27 irrevocable letter of credit under ORS 539.180;

28 **“(b)** Does not apply to a water right transfer that includes changing the
29 point of diversion upstream; and

30 **“(c)** Does not allow a person to purchase, lease or accept a gift of a de-

1 terminated claim for conversion to an in-stream water right as described in
2 ORS 537.348 (1).

3 “(4) For purposes of determining under ORS 537.348 (5) or 540.523 (2)
4 whether the Water Resources Department may approve a lease or temporary
5 transfer of a determined claim, an injury to another determined claim is an
6 injury to an existing water right. Notwithstanding ORS 537.348 (6) or
7 540.523 [(5)] (6), the department shall deny, modify or revoke the lease or
8 temporary transfer of a determined claim if the department determines that
9 the lease or temporary transfer has resulted in, or is likely to result in:

10 “(a) Injury to another determined claim or other existing water right; or

11 “(b) Enlargement of the determined claim.

12 “(5) The department shall revoke the lease or temporary transfer of a
13 determined claim if a court judgment stays the determined claim.

14 “(6) If a determined claim is removed from land by lease or temporary
15 transfer, the land from which the determined claim is removed may not re-
16 ceive water during the term of the lease or temporary transfer.

17
18 **“SAVINGS CLAUSE**

19
20 **“SECTION 19. Nothing in section 8, 10 or 12 to 15 of this 2025 Act**
21 **or in the amendments to ORS 537.211, 537.348, 537.465, 540.510, 540.520,**
22 **540.523, 540.530 or 540.531 by sections 1 to 6, 16 and 17 of this 2025 Act**
23 **affects any water right settlement agreement to which the State of**
24 **Oregon, one or more federally recognized Indian tribes in this state**
25 **and the federal government are parties under ORS 539.300 to 539.360.**
26 **The terms of any water right settlement agreement controls in the**
27 **event of a conflict with the provisions of section 8, 10 or 12 to 15 of this**
28 **2025 Act or in the amendments to ORS 537.211, 537.348, 537.465, 540.510,**
29 **540.520, 540.523, 540.530 or 540.531 by sections 1 to 6, 16 and 17 of this**
30 **2025 Act. Nothing in section 8, 10 or 12 to 15 of this 2025 Act or in the**

1 amendments to ORS 537.211, 537.348, 537.465, 540.510, 540.520, 540.523,
2 540.530 or 540.531 by sections 1 to 6, 16 and 17 of this 2025 Act affects
3 any provision of ORS chapter 539 or any sovereign rights, privileges
4 and interests held by any tribe, including but not limited to treaty
5 protected water rights, determined claims or adjudicated water rights.

6 7 **“REPORTING REQUIREMENTS**

8
9 **“SECTION 20. No later than December 15, 2026, and December 15,**
10 **2028, the Water Resources Department shall submit a report in the**
11 **manner provided by ORS 192.245 to the Joint Committee on Ways and**
12 **Means. Each report shall include, from January 1, 2026, to the date**
13 **of the report:**

14 **“(1) The number of water right transfer applications received by the**
15 **department;**

16 **“(2) The number and type of transfers that were subject to evalu-**
17 **ation under ORS 537.211 (5)(b), 540.510 (1)(a)(B), 540.520 (7)(a)(B), 540.523**
18 **(2)(b) or (6)(b), 540.530 (1)(a)(B) or 540.531 (2)(a)(B)(ii);**

19 **“(3) The number of transfers described in subsection (2) of this**
20 **section that were approved or denied; and**

21 **“(4) The number of transfers described in subsection (2) of this**
22 **section for which protests were filed following a determination to ap-**
23 **prove or deny the transfer.**

24 25 **“CAPTIONS**

26
27 **“SECTION 21. The unit captions used in this 2025 Act are provided**
28 **only for the convenience of the reader and do not become part of the**
29 **statutory law of this state or express any legislative intent in the**
30 **enactment of this 2025 Act.”.**

